

STATE OF MISSISSIPPI
SECRETARY OF STATE
BUSINESS SERVICES DIVISION

IN THE MATTER OF:

ADMINISTRATIVE PROCEEDING
NUMBER 98-057

ADSA, INC. also known as
AMERICAN DEPUTY SHERIFF'S ASSOCIATION,
And LARRY SMITH, PRESIDENT
15915 Katy Freeway, #350
Houston, TX 77094
Respondents

ORDER

This matter was referred to Hearing Officer, Harold D. Miller, Jr. and is the subject of his ORDER OF HEARING OFFICER entered December 17, 1999, a copy of which is attached as Exhibit A and incorporated herein by reference.

The recommendations of the Hearing Officer contained in said Order is hereby adopted in its entirety, and is made the Order of the Secretary of State.

So ordered, this the 28th day of December, 1999.



ERIC CLARK
Secretary of State
State of Mississippi

**STATE OF MISSISSIPPI
SECRETARY OF STATE
BUSINESS SERVICES DIVISION, CHARITIES ENFORCEMENT**

IN THE MATTER OF:

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And LARRY SMITH, PRESIDENT
15915 Katy Freeway, #350
Houston, TX 77094**

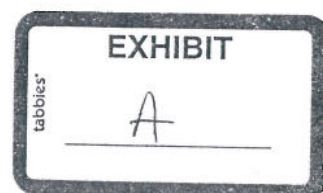
**ADMINISTRATIVE PROCEEDING
NO. 98-057**

ORDER OF HEARING OFFICER

The Secretary of State's Summary Cease and Desist Order and Amended Notice of Intent to Revoke or Suspend Registration and To Impose Administrative Penalty filed herein, and Respondent's request for an administrative hearing, came before the undersigned hearing officer on the 10th day of November, 1999 pursuant to Section 79-11-509 of the Mississippi Code of 1972, as amended, and the Mississippi Charitable Solicitations Act Rules and any and all applicable Mississippi laws and regulations.

LARRY SMITH, the President of ADSA, Inc. was present at the administrative hearing. Attorneys Bernard Grenrood, Jr. and Michael Courteau, of 700 South Grand Street, Monroe, LA 71201 represented Mr. Smith and ADSA, Inc.

The undersigned Hearing Officer received written and oral evidence at the hearing and subsequent thereto. Based on such evidence, the undersigned Hearing Officer, pursuant to Rule 417 of the Secretary, makes the following findings of fact, conclusions of law and final order:



FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Secretary of State, State of Mississippi (hereinafter "the Secretary") has jurisdiction over the parties and subject matter herein by virtue of the Mississippi Charitable Solicitation Act (hereinafter "the Act"). Miss. Code Ann. § 79-11-501, et seq. (Supp. 1998).

2. ADSA, INC., also known as AMERICAN DEPUTY SHERIFF'S ASSOCIATION (hereinafter, "ADSA") is a charitable organization as defined by Miss. Code Ann. § 79-11-501 (Supp. 1998) and is subject to the registration requirements of Miss. Code Ann. § 79-11-503 (Supp. 1998).

3. ADSA's registration renewal application received by the Secretary of State's Office on July 23, 1998 was incomplete, as an audited financial report required by Miss. Code Ann. § 79-11-501(1) was not submitted with the application or thereafter. ADSA also failed to make certain financial disclosures required by Section 79-11-507(1), particularly the amount spent on solicitations. The Act provides that a registration statement that contains false, misleading, deceptive or incomplete information or documents shall not be considered sufficient. Miss. Code Ann. § 79-11-503(1) (Supp. 1998). Pursuant to Section 79-11-509(1)(a) of the Act, the Secretary shall deny, suspend or revoke any registration that is incomplete. Further, any solicitations made by ADSA in the State of Mississippi after it failed to renew its registration by filing all registration and financial documents are violations of the Act. Miss. Code Ann. § 79-11-503(3) and (6) Supp. 1998).

4. In its registration statement received by the Secretary on July 23, 1998, ADSA wholly failed to disclose the adverse legal action taken against it pertaining to its fund-raising activities by the State of Oregon in 1998 as required by Section 79-11-503(1)(g) of the Act. In denying the existence of any such action, ADSA made false or misleading statements and omitted material facts in violation of Sections 79-11-509(1)(c) and 79-11-519(f) of the Act. The Secretary shall deny,

suspend or revoke an application or registration of a charitable organization that has filed a document with the Secretary, which contains one or more false or misleading statements or omits material facts; or has had authority to engage in charitable or fund-raising activities denied, revoked or suspended by the Secretary of State or any other state or jurisdiction. Miss. Code Ann. § 79-11-509(1)(Supp. 1998).

5. ADSA states in its July 23, 1998 registration statement that it has no chapters, branches or affiliates located in the State of Mississippi. However, in solicitation material mailed to Mississippi residents, ADSA lists a return address of 1060 County Line Rd. Suite #3A-236, Ridgeland, MS 39157, which is in fact a mail box service. This practice is intended to make recipients believe that there is a local chapter of ADSA so that they will be more inclined to make a contribution. Pursuant to Section 79-11-519(7) of the Act, a misrepresentation may be accomplished by words or conduct or failure to disclose a material fact. Regardless of a person's intent or the lack of injury, such acts are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion. The Secretary is mandated to deny, suspend or revoke a registration or any charitable organization that has engaged in the use or employment of any deception or misrepresentation. Miss. Code Ann. § 79-11-509(1)(g) (Supp. 1998).

6. Larry Smith signed ADSA's July 23, 1998 registration statement, certifying that the information on the document and in the attachments is true and correct. He further certified that he was authorized to submit the registration statement on behalf of ADSA and that he was under a continuing obligation to notify the Secretary of State's Office of any changes in the information provided to that office. Larry Smith as president of ADSA, knew or should have known of the misrepresentations and omission contained in the registration statement filed by ADSA.

7. Written confirmation materials mailed by ADSA to prospective donors in this state did not meet the disclosure requirements of Section 79-11-523 of the Act. Any written confirmation, receipt or reminder sent to any person who has contributed or has pledged to contribute shall include a clear and conspicuous disclosure listing the name of the professional fund-raiser as on file with the Secretary and that the solicitation is being conducted by a professional fund-raiser who is being paid for his services. Also, the disclosure statement must state verbatim, "the official registration and financial information of (the charity) may be obtained from the Mississippi Secretary of State's office by calling 1-888-236-6167. Miss. Code Ann § 79-11-523 (Supp. 1998). The written confirmations of ADSA did not contain the required language or information.

8. Based upon the foregoing violations, the Secretary entered a Summary Cease and Desist Order against ADSA and Larry Smith on October 23, 1998. The respondents were directed to immediately cease and desist soliciting charitable contributions in this state. Larry Smith received this order on November 2, 1998. However, respondents continued to solicit contributions from a substantial number of Mississippi residents in direct violation of the Act and the Secretary's Order.

9. The Secretary issued a Summary Cease and Desist Order to ADSA, Nationwide and Mailboxes, Etc. on December 14, 1998. The order mandated that ADSA, Larry Smith and Nationwide Fund-raisers immediately cease and desist soliciting charitable contributions in the State of Mississippi. Further it mandated that Mail Boxes, Etc. and Bruce Canada immediately cease and desist forwarding any and all charitable contributions made to ADSA to its agents in this state after November 2, 1998. Any such contributions were tendered to the Secretary of State.

10. ADSA through its professional fund-raiser, Charitable Resource Foundation, stated to individuals whom were solicited for contribution, that the contributions would be used to support

local law enforcement agencies at the county level. The written solicitation brochures state that ADSA provides a \$5,000 Death Benefit to the family of any member killed in the line of duty; provides student scholarships to dependents of ADSA members and provides equipment donations to sheriffs departments when requested. Mississippi residents called by ADSA solicitors were also told of the benefits provided to local law enforcement agencies. However, when Chief Deputy George Caruthers with the Oktibbeha County Sheriff's Department requested the donation of camcorders for police enforcement in his county, he was ignored and did not receive any equipment. No law enforcement office in Mississippi has received any equipment donations from ADSA nor have any family members of Mississippi ADSA member received any death benefits. All responses given by a professional fund-raiser and professional solicitor to an oral or written request for information shall be truthful. Miss. Code Ann. § 79-11-523 (Supp. 1998). The above statements made by ADSA's solicitors and provided in written solicitation materials are misleading and imply that contribution made by Mississippi residents benefit Mississippi law enforcement.

11. The Secretary intercepted over 700 written confirmations and monetary contributions addressed to ADSA received through its mail box service at Mail Boxes Etc., 1060 E. County Line Rd, suite #3A-236, after December 14, 1998. The monetary contributions to ADSA, which were intercepted by the Secretary and returned to the donors, totaled \$14,688.

12. On service of the above mentioned Cease and Desist Order upon Mail Boxes, Etc. it was discovered that Omnitel, Inc. and Charitable Resource Foundation were also serving as agents and professional fund-raisers for ADSA. Neither organization was listed as professional fund-raisers or professional solicitors on the registration statement of ADSA received on July 23, 1998 nor were copies of any contracts between ADSA and Omnitel or Charitable Resource Foundation submitted with the registration statement as required by Section 79-11-5030) of the Act. Charitable Resource

Foundation was clearly acting as a professional fund-raiser for ADSA. Brian Wright, of Charitable Resources Foundation, entered into a Mailbox Service Agreement with Mail Boxes Etc. on April 9, 1998 to receive mail addressed to American Deputy Sheriffs Association. Charitable Resource Foundation also filed an Application for Delivery of Mail through Agent to the Postmaster of Ridgeland, MS 39158 on behalf of American Deputy Sheriffs Association. Brian Wright of Charitable Resource Foundation executed this application on May 19, 1998. Additionally, the toll free number listed on the ADSA written confirmation notices mailed to Mississippi residents, was operated and answered by Charitable Resource Foundation.

13. Omnitel, Inc. filed a Professional Fund-raiser Application for Registration and a Solicitation Campaign Notice with the Secretary on June 11, 1998. Both documents state that Omnitel is a professional fund-raiser for ADSA, Inc. The Solicitation Campaign Notice was signed by Larry C. Smith, president of ADSA, Inc. and listed the date of the solicitation campaign as June 5, 1998 through April 23, 2001. A Solicitation Campaign Summary of Financial Activities was submitted by Omnitel, Inc. for the campaign on behalf of ADSA on July 22, 1999. The report provides financial statement for the period of June 15, 1998 through June 14, 1999. Larry Smith also signed this document as an authorized officer of the ADSA. The above mentioned documents acknowledges that Omnitel was indeed operating a solicitation campaign on behalf of ADSA after its registration had lapsed and after the October 23, 1998 Cease and Desist Order was issued by the Secretary.

14. ADSA, Inc. entered into a fund-raising agreement with Charitable Resource Foundation October 16, 1997 for a three-year period. The geographic area covered by this agreement included the state of Mississippi. The contract was signed by Carla Tessman, an officer of ADSA, Inc. and Brian Wright of Charitable Resource Foundation. This contract was not submitted

by ADSA with its registration statement received by the Secretary on July 23, 1998 as required by Section 79-11-5030) of the Act. 15. Because of the foregoing violations of the Act and the Summary Cease and Desist Order against ADSA and Larry Smith of October 23, 1998, the Secretary is mandated to deny and revoke the registration of ADSA, pursuant to Section 79-11-509(l) of the Act and enter a Cease and Desist Order prohibiting ADSA and Larry Smith from soliciting solicitation in the State of Mississippi. The language is clear and non-discretionary, if a registrant commits the aforementioned violations of the Act, the Secretary shall deny suspend or revoke the registration.

15. Pursuant to the Act, the Secretary is also authorized to impose an administrative penalty of up to \$25 000.00 for each violation of the Act by ADSA and Larry Smith, as its president. See Miss. Code Ann. § 79-11-504)(4)(b)(Supp. 1998).

16. ADSA acknowledges its failures in submitting an incomplete and deficient renewal application. Its explanation that an audit was undergoing does not excuse the violation. ADSA did have contracts of solicitation with some organizations which were operating in violations of Mississippi Law and regulations of the Secretary of State. ADSA essentially asserts that it did not authorize these solicitations and did not know they were being conducted. However, ADSA, Inc. chose this method of solicitation, and to conduct solicitations in several states using subcontractors. ADSA must bear the consequence of its failure to manage its contractors and subcontractors as required by law. It is also found that Larry Smith personally directs the activities of ASDA Inc., and is personally responsible for the results of these violations.

17. As ordered hereafter, ADSA, Inc. and Larry Smith will be barred from participation in charitable fund-raising in Mississippi for a stated period of time. The Secretary of State argues for a permanent bar. The Secretary's authority is limited to that contained in applicable statutes.

There is no statutory authority to permanently bar an organization from applying for a license in Mississippi.

FINAL ORDER

I recommend the following:

1. That the registration of ADSA, Inc. be revoked.
 2. That ADSA, Inc. be barred from applying for registration in Mississippi for a period of two (2) years from the date of this Order. If an application is filed by ADSA, Inc. or any successor organization after the expiration of two (2) years, the activities which are the subject of this proceeding and any changes in the method of solicitation should be considered in determining whether to register ADSA, Inc. at that time. The registration process should not be limited to a determination of whether ADSA, Inc. has submitted the financial and other information required by statute and regulation. ADSA, Inc. should be required to specifically prove that it has changed and rehabilitated its operations.
 3. The above penalties shall apply equally to Larry Smith and to any organization with which he is now or shall become a director, officer, employee or agent.
 4. ADSA, Inc. and Larry Smith are jointly and severally fined in the amount of \$10,000.
- Submitted this the 17th day of December, 1999.

STATE OF MISSISSIPPI

I hereby certify that this is a true
and complete copy of the 8 page
document on file in this office.
DATED December 20, 1999

Eric Clark

BY: Ruthie Singleton

This Certification Stamp Replaces Our
Previous Certification System

HAROLD D. MILLER, JR.
Hearing Officer

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